No. 96-1581

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

STATE OF SOUTH DAKOTA,
Petitioner,
v.

YANKTON SIOUX TRIBE, a federally recognized tribe of Indians, and its individual members; DARRELL E. DRAPEAU, individually, a member of the Yankton Sioux Tribe,
Respondents,
and

SOUTHERN MISSOURI WASTE MANAGEMENT DISTRICT, a nonprofit corporation,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF OF LEWIS COUNTY, IDAHO, *AMICUS CURIAE*, IN SUPPORT OF PETITIONER, STATE OF SOUTH DAKOTA

KIMRON R. TORGERSON
Lewis Co. Prosecuting Attorney
P.O. Box 398
Nezperce, ID 83543
(208) 937-2271
Counsel of Record

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43 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

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INTEREST OF AMICUS CURIAE

The interest that prompts the filing of this Brief of Lewis County, Idaho, *Amicus Curiae*, in Support of Petitioner, State of South Dakota, can be simply stated. The 1894 Indian appropriation act that ratified the Yankton

cession agreement also ratified a similar Nez Perce cession agreement. Act of August 15, 1894, ch. 290, 28 Stat. 286, 326; Lewis Co. App. at 1. It was not unusual for Congress to adopt this format for the ratification of more than one cession agreement, as *DeCoteau v. District County Court*, 420 U.S. 425 (1975) attests. *DeCoteau*, 420 U.S. at 439-441 & nn. 21, 22. As a result, although the Nez Perce agreement started out as a separate measure with independent cession instructions, agency correspondence, and tribal negotiations, and although it was reported separately as S. Ex. Doc. No. 31, 53d Cong., 2d Sess. (1894), the subsequent congressional debate addressed, among other subjects, all aspects of both the Yankton agreement and the Nez Perce agreement—sometimes separately but more often together.

In this instance, the Nez Perce cession agreement, like the Yankton agreement, encompassed *all* of the unallotted lands of the 1863 Nez Perce reservation. *See also DeCoteau*, 420 U.S. at 438, 446-47. And as we will show, other pertinent factors are also remarkably similar to those found in the Yankton case. For example, today, the 1863 Nez Perce reservation is a rural area primarily owned and populated by non-Indians. Approximately ninety percent (90%) of the land is owned by non-Indians and approximately ninety percent (90%) of the population is also non-Indian. In this rural area of central Idaho, for nearly three-quarters of a century, the jurisdictional history has also been equally clear. Early on, state and federal cases, including the decision of this Court in *Dick v. United States*, 208 U.S. 340 (1908), were premised upon Nez Perce reservation disestablishment. However, recent assertions of tribal jurisdiction over non-members and/or claims regarding the lack of state jurisdiction over tribal members have caused the issue to resurface in the State of Idaho.

Of course, it is true that the Nez Perce and Yankton cession documents differ in one material respect. Parties in *DeCoteau* and in this case have, for a *number*

of different reasons, *recognized and conceded* that the Nez Perce cession presents a *stronger* case for disestablishment than either *DeCoteau* or *Yankton*. *DeCoteau*, 420 U.S. 425; *Yankton Sioux Tribe v. Southern Missouri Waste Management*, 99 F.3d 1439 (8th Cir. 1996). Moreover, in this instance, the court below has agreed with this assessment and repeated that recognition in the text of the panel majority opinion:

> A number of savings clauses in other agreements also state that earlier agreements and treaties will 'be in full force and effect,' but none include such a strong phrase as 'the same as though this agreement had not been made,' and most include language explaining that prior treaties will remain in force so long as they are 'not inconsistent' with the later agreement. . . . *Dick v. United States*, 208 U.S. 340, 352, 28 S.Ct. 399, 402-03, 52 L.Ed. 520 (1908) [Nez Perce] (treaty provisions 'not inconsistent with the provisions of this agreement are hereby continued in full force and effect').
>
> Article XVIII contains no similar limitation. It does not state that only consistent aspects of the earlier treaty are to continue.

Southern Missouri Waste Dist., 99 F.3d at 1447; Pet. App. at 16. In this instance, the distinction, according to the panel majority, is tied to the fact that the Nez Perce cession is not burdened by the Yankton Article XVIII savings clause. *Id.*

We recognize that most litigants would ordinarily seize such a determinative factor and join in the court's claim that it makes all the difference. In all candor, however, Lewis County, as a friend of the Court, cannot represent to this Court that this point or any other point deemed significant by the panel majority truly deserves deference or support. We cannot support any part of the opinion of the panel majority for the simple reason that it does not follow the precedent of this Court, or the

intent of Congress. Our views are in agreement with those of the dissent and the Supreme Court of the State of South Dakota. *Yankton Sioux Tribe v. Southern Missouri Waste Dist.*, 99 F.3d 1439, 1458 (8th Cir. 1996) (Magill, J., dissenting); Pet. App. at 44; *South Dakota v. Greger*, 559 N.W.2d 854 (S.D. 1997); Pet. App. at 125-158.

Lewis County, Idaho, has the support of a recently formed association of local governmental units, the North Central Idaho Jurisdictional Alliance, in filing this brief *amicus curiae*. The Alliance consists of three counties, eight cities, three school districts and seven highway districts in North Central Idaho, whose geographic boundaries include land which was within the Nez Perce reservation as it existed prior to 1894.

SUMMARY OF ARGUMENT

We rely on the decisions of this Court, which has decided six cases of this general nature since the 1960's. According to this precedent, a sum certain cession statute of this exact kind is "precisely suited" for disestablishment. *DeCoteau*, 420 U.S. at 445. It presents an "almost insurmountable presumption" of disestablishment, or a "nearly conclusive presumption" of disestablishment. *Solem v. Bartlett*, 465 U.S. 463, 470-471 (1984); *Hagen v. Utah*, 510 U.S. 399, 411 (1994).

In *Hagen*, even the dissenting Justices did not disagree on this point. Justice Blackmun summarized in *Hagen*:

> In contrast, the only two cases in which this Court previously has found diminishment involved statutes and underlying tribal agreements to " 'cede, sell, relinquish, and convey to the United States all [the Indians'] claim, right, title, and interest' " in unallotted lands, *DeCoteau*, 420 U.S., at 439, n.22, or to " 'cede, surrender, grant, and convey to the United States all [the Indians'] claim, right, title, and interest' " in a defined portion of the reservation, *Rosebud*, 430 U.S., at 591, n.8. The Court held that in the presence of statutory language "precisely suited" to diminishment, *id.*, at 597, supported by the express consent of the tribes, "the intent of all parties to effect a clear conveyance of all unallotted lands was evident." *DeCoteau*, 420 U.S., at 436, n.16. I need hardly add that no such language or underlying Indian consent accompanies the statute at issue in this case.

Hagen, 510 U.S. at 427 (Blackmun, J., dissenting).

In addition, Lewis County, Idaho, as *amicus curiae*, will continue to rely upon the Nez Perce case of *Dick v. United States*, 208 U.S. 340 (1908) and the recognition of this Court in *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 613-615 n.47 (1977) of the important role that the analysis of *Dick* plays in cases of this nature.

Nothing in the Nez Perce documentation, or those portions of the congressional debates directed to the Nez Perce agreement, supports any other conclusion.

ARGUMENT

I.

GENERAL CESSION DOCUMENTATION UNDERMINES THE OPINION OF THE PANEL MAJORITY.

As a preliminary matter, it should be noted that the decision of this Court in *DeCoteau* certainly appears to be controlling in this situation. If this is the case, the jurisdiction of the Nez Perce Tribe would necessarily be limited to tribal trust lands. *DeCoteau*, 420 U.S. at 427 n.2, 446-447. Tribal jurisdiction simply would not extend to the fee land site at issue in this controversy. *Id. See generally Seymour v. Superintendent*, 368 U.S. 351 (1962); *Mattz v. Arnett*, 412 U.S. 481 (1973); *DeCoteau*, 420 U.S. 425; *Rosebud*, 430 U.S. 584; *Solem*, 465 U.S. 463 and *Hagen*, 510 U.S. 399. (We understand that Utah Counties are briefing this trust/fee question).

In further support of the position that *DeCoteau* is important here, Lewis County has attached to this brief a copy of the 1894 Nez Perce statute in the appendix. Act of August 15, 1894, ch. 290, 28 Stat. 286, 326; Lewis County App. at 1-4. Even a cursory comparison of the provisions of the Sisseton-Wahpeton Act and the Nez Perce act unequivocally substantiates the argument that the 1894 Nez Perce statute is also the functional twin of the 1891 *DeCoteau* statute. For example, the "operative language" of each statute provides:

> [C]ede, sell, relinquish, and convey to the United States all their claim, right, title, and interest. . . .

Act of March 3, 1891, 26 Stat. 1036 (Sisseton-Wahpeton act—appended in *DeCoteau*, 420 U.S. at 449).

> [C]ede, sell, relinquish, and convey to the United States all their claim, right, title, and interest. . . .

28 Stat. at 326 (Nez Perce act, Lewis Co. App. at 1).

Beyond the "operative language" on the face of the statute, which this Court has found to be most significant in resolving questions of this nature, the other Nez Perce documentation confirms the significance and strength of the comparison. In fact, in the congressional debates, key congressional speakers specifically reference agreements from the past as precedent for the 1894 legislation. 26 Cong. Rec. 8258, 8265-69, 53d Cong., 2d Sess. (1894). Mr. Pickler: ". . . The same kind of treaty we have always made." *Id.* at 8265. Mr. Pickler: ". . . These are treaties, just as all other cessions of land have been." *Id.* at 8268.[1]

[1] As previously pointed out, although three years and one session of Congress separate the passage of the Sisseton-Wahpeton and the Yankton and Nez Perce Acts, parts of the process were actually under consideration in both session. Many of the key congressional participants in the process continued to hold office through the passage of the 1894 Act. And the fact that approximately *one-third* of the members in the House of Representatives and *two-thirds* of the members in the entire Senate for the 51st Congress (Sisseton-Wahpeton) were still there in the 53rd Congress when the 1894 Acts were finally considered, debated and passed, is significant.

In every other respect, the remainder of the Nez Perce documentation confirms this same understanding. For the most part, this documentation is set forth in Sen. Ex. Doc. No. 31, 53d Cong., 2d Sess. (1894), which contains the official Nez Perce correspondence, reports, transcripts and cession agreement, and also in the congressional debates and reports on the 1894 Act. *See* H.R. Rep. No. 6913, 53d Cong., 2d Sess. (1894); Act of August 15, 1894, 28 Stat. 286.

II.

SPECIFIC NEZ PERCE DOCUMENTATION CONFIRMS DISESTABLISHMENT IN THE TRADITIONAL SENSE AND ERODES THE NEW ARGUMENT OF THE UNITED STATES.

The transcripts of the tribal negotiations contained in Sen. Ex. Doc. No. 31 are particularly telling. In *Hagen v. Utah*, 510 U.S. 399 (1994), this Court set forth, with special emphasis, the boundary discussions significant there.

> 'You say that [the Reservation boundary] line is very heavy and that the reservation is nailed down upon the border. That is very true as applying to the past many years and up to now, but congress has provided legislation which will pull up the nails which hold down that line and *after next year there will be no outside boundary line to this reservation.*' Minutes of Councils Held by James McLaughlin, U.S. Indian Inspector, with the Uintah and White River Ute Indians at Uintah Agency, Utah, from May 18, to May 23, 1903.

Hagen, 510 U.S. at 417 (emphasis in original).

The Nez Perce transcripts document a similar understanding:

> Salmon River Billy: . . . [T]he country had been inclosed according to the treaty and prevented the entrance on the reservation of any white man and any who should try to set aside or break down the boundaries of that reservation. . . . Perhaps it may be on account of having another President, who is a Democrat; perhaps it is he who has made the *edict for breaking down the lines of the reservation.*

Sen. Ex. Doc. No. 31 at 56 (1894) (emphasis added).[2]

In addition, the federal commissioners here also specifically cited the *DeCoteau* example ("the Sisseton and Wahpeton Indians have sold their land"), among others, in their discussions with the tribe in an effort to gain general support for the Nez Perce Agreement. Sen. Ex. Doc. No. 31 at 30. And in response to the price to be paid per acre, Commissioner Allen again referenced the *DeCoteau* Agreement:

> The Government has made you the most liberal offer in my opinion that has been made to any tribe since Harrison was President. The only tribe that I can remember that have received $2.50 per acre for any considerable quantity of land is the *Sisseton and Wahpeton tribe in Dakota.* They had a smaller body of land, very little of which was waste land not good for agriculture. We paid the same price we propose to pay you for all your land. . . .

Id. at 45 (emphasis added).

Later in the congressional debates, this same disestablishment concept was again described, but in different terms. References to "public domain" appear in more

[2] The recent decision in the Tenth Circuit Court of Appeals that complicates *Hagen* in this respect, *Ute Indian Tribe v. Utah,* 114 F.3d 1513 (10th Cir. 1997), is discussed in the Brief of Duchesne County, Utah, and Uintah County, Utah, as *Amicus Curiae* in Support of the Petitioner, State of South Dakota *South Dakota v. Yankton Sioux Tribe,* (Aug. 7, 1997) (No. 96-1581). This Nez Perce "breaking down the lines" documentation clearly supports the position of the Utah Counties.

than one instance. 53 Cong. Rec. 6425, 6426, 8269 53d Cong., 2d Sess. (1894). There is little doubt that *Hagen* conclusively resolved the significance of that concept in reservation disestablishment cases. *Hagen,* 510 U.S. at 412-414.

In light of our precedents, we hold that the

> restoration of unallotted reservation lands to the public domain evidences a congressional intent with respect to those lands inconsistent with the continuation of reservation status.

Id. at 414.

Here, as in the Yankton case, after the passage of the 1894 Nez Perce Act, the Commissioner of Indian Affairs, in his Annual Report to Congress, unequivocally stated that the Nez Perce lands would be "restored to the public domain." Annual Report of the Commissioner of Indian Affairs at 26 (1894). Similarly, the Secretary of Interior's Annual Report reflects this same understanding: "restoring to the public domain." Report of the Secretary of the Interior, H. Exec. Doc. 1, pt. 5, 53d Cong., 3d Sess. (Vol. 14) at IX (1894-95).

As provided in the 1894 Act, on November 8, 1895, the President of the United States, Grover Cleveland, described the "cession and agreement" and proclaimed that the area "acquired" from the Nez Perce tribe would be open to settlement on November 18, 1895. Proclamation of November 8, 1895, 29 Stat. 873, 875; Lewis Co. App. at 13a, 20a.[3] At the time, the local press reported the common perception of the event in the following manner:

> RESERVATION IS NO MORE . . . At twelve o'clock Monday the Nez Perce reservation passed

[3] The Presidential Proclamations opening the reservation to settlement were deemed especially significant in *Rosebud,* 430 U.S. at 602-603 and *Hagen,* 510 U.S. at 419-420. In this instance, the cession terminology of the Nez Perce Proclamation similarly reflects this same important construction. Nez Perce Proclamation of November 8, 1895, 29 Stat. 873; Lewis Co. App. at 13a.

> into history . . . heads began bobbing up all over the former reservation. . . .
>
> *Lewiston Tribune* (Idaho), November 20, 1895 at 1.
>
> CANNON BOOMED AT NOON . . . The cannon was fired in front of the land office, at twelve o'clock, Monday. This was the death knell of the great Nez Perce reservation, and the introduction of new conditions to follow these important changes.
>
> *Lewiston Teller* (Idaho), November 21, 1895 at 1.

Even the local Indian agent recognized that the reservation "formerly embraced" the "ceded lands." H.R. Doc. No. 5, Vol. II, 54th Cong., 2d Sess. (Vol. 13) at 141 (1897).

As a result, the 1863 Nez Perce reservation was thereafter treated in the same manner as the original Sisseton-Wahpeton reservation. It was deleted from official reservation maps, and described as a "former" reservation in numerous other instances. *Frederick W. McReynolds*, 40 Pub. Lands Dec. 413 (1912); *Lee v. Thomas*, 29 Pub. Lands Dec. 251 (1899); *Railroad Right of Way—Special Act; Spokane & Palouse Ry. Co.*, 22 Pub. Lands Dec. 674 (1896). Even after the Indian Reorganization Act of 1934, Act of June 18, 1934, 48 Stat. 984, the Department of the Interior continued to delineate the "FORMER NEZ PERCE INDIAN RESERVE" on the Official General Land Office Map of the State of Idaho (1939).

The foregoing is significant to the result in the case now before this Court because of the overall identity between the historical context and contemporaneous understanding of the Yankton and Nez Perce openings in the post-1894 Act time period. South Dakota, Southern Missouri and their other *amici* have amply documented the strong contemporaneous indicators of disestablishment particular to the Yankton Reservation in their briefs. The similar indicators in the Nez Perce record simply confirm the view that Congress, the Commissioner of Indian Affairs, the local Indian populations and the non-Indian populations each perceived that disestablishment was intended by both the Yankton and Nez Perce Acts.

Moreover, we are constrained to point out, in response to the arguments made elsewhere by the Nez Perce tribe, that other later generic references to a Nez Perce "reservation" lack significance.

First, the Court in *Hagen* noted that "confusion" in the subsequent legislative records did nothing to alter a conclusion firmly grounded upon "textual and contemporaneous evidence" of disestablishment. *Hagen*, 510 U.S. 420. *See also Pittsburg & Midway Coal Min. Co. v. Yazzie*, 909 F.2d 1387, 1416 (10th Cir. 1990), *cert. denied*, 498 U.S. 1012 (1990). Secondly, here, as in *Hagen*, the subsequent demographics further support a conclusion of disestablishment. Within the 1863 Nez Perce reservation, roughly 90% of the population is non-Indian and roughly 90% of the lands are non-Indian fee lands. As this Court noted in *Hagen*, in this same situation, "a contrary conclusion would seriously disrupt the justifiable expectations of the people living in the area." *Hagen*, 510 U.S. at 421.

We conclude that the contemporaneous history of the opening of the Nez Perce reservation strongly supports the disestablishment of the Yankton reservation, which proceeded along the same track, and supports the disestablishment of the Nez Perce reservation itself.

III.

RELEVANT CASE LAW CLEARLY SUPPORTS DISESTABLISHMENT.

If disestablishment was the intended result of the 1894 Nez Perce legislation, one would expect the early case law to generally reflect that status. Again, this is, in fact, the case. Early on, this Court decided *Dick*, 208 U.S. 340, involving the ceded Nez Perce reservation.

In the text of the Opinion, the Court in *Dick* quoted, with approval, that:

> The superintendent of the Nez Perce Indians testified: "I do not know of any reservation or any part of the reservation used for Government purposes or for Indian purposes within the boundary of the village of Culdesac. I have no idea there is any such reservation within such village. Culdesac is seven or eight miles from the exterior boundaries of the Indian school reservation." The lands upon which the village of Culdesac is located were part of those ceded to the United States by the agreement of 1893 with the Indians, and before the above transaction in that village about whiskey occurred the title to such lands had passed by patent from the United States under the townsite laws. . . .

Dick, 208 U.S. at 351. *See Rosebud*, 430 U.S. at 614, 615 and 624 citing *Dick* in support of the conclusion that a 1910 Rosebud Act with a similar liquor provision had similarly disestablished that portion of the Rosebud reservation.

In 1912, the Idaho Supreme Court in *State v. Lott*, 123 P. 491 (Idaho 1912), agreed with *Dick* in this respect:

> The argument and reasoning of the Dick Case is authority for and sustains the view that the general government has only retained exclusive jurisdiction over the Nez Perce Indians, and what *formerly* constituted the Nez Perce Indian reservation, to the extent and for the purpose of prohibiting the introduction of intoxicants. . . .

Lott, 123 P. at 495 (emphasis added).

In *Ex Parte Tilden*, 218 F. 920 (D. Idaho 1914), the federal district court addressed a writ of habeas corpus presented by a Nez Perce Indian who had shot another person on a railroad right of way within the "former" reservation and was prosecuted in state court. The court noted:

> The status of what is referred to as the Nez Perce reservation is pretty fully set forth in the opinion in the case of *Dick v. United States*, 208 U.S. 340, 28 Sup. Ct. 399, 52 L.Ed. 520. Villages and towns inhabited almost exclusively by white people have grown up upon the territory *formerly* embraced within its limits.

Ex parte Tilden, 218 F. at 921 (emphasis added).

After further examining *Dick*, the court concluded that the lands "within the boundaries of what was *formerly* the Nez Perce Indian reservation" were no longer "Indian country" for any purpose other than enforcement of the liquor prohibition statutes. *Id.* at 924 (emphasis added).

To summarize, as *Dick*, 208 U.S. 340, *Lott*, 123 P. 491, and *Ex parte Tilden*, 218 F. 920, generally attest, the view of the original Nez Perce reservation as a "former" reservation was fairly uniform and certainly controlling in the resolution of "reservation" related issues, at least through the 1950's. In addition, *Dick* figures prominently in the "buffer" lands analysis (lands that "adjoin" Indian country) set forth in the 1942 edition of Felix Cohen's Handbook of Federal Indian Law. F. Cohen, Handbook of Federal Indian Law at 353 (1942 ed.). This 1942 text cites *Dick* as one of three cases that support liquor restrictions of this nature. *Id.* at 353 n.26. The other two cases are *Perrin v. United States*, 232 U.S. 478 (1914) (1892 Yankton cession) and *United States v. Forty-three Gallons of Whiskey*, 108 U.S. 491 (1883) (1854 Chippewa cession). All three involve "formerly Indian country" areas. F. Cohen, Handbook of Federal Indian Law at 307 (1982 ed.).

In more recent years, with the adoption of Idaho's version of Public Law 280, Idaho Code § 67-5101, the need to specifically identify the location of reservation boundaries, trust lands or fee lands with respect to "Indian country" was lessened and distinctions necessarily blurred. Additionally, throughout the history of the area, there are

other references to a "Nez Perce reservation" that can readily be seen as colloquialisms, convenient ways to designate a geographic area in easily recognizable form. *See* a discussion of this point in *Yazzie*, 909 F.2d at 1416. *See also Hagen*, 510 U.S. at 420.

IV.

THE NEZ PERCE AGREEMENT IS NOT LIMITED IN LANGUAGE OR SCOPE.

The Eighth Circuit Court of Appeals and Respondent Yankton Sioux Tribe both found a *distinction* to be significant:

> A number of savings clauses in other agreements also state that earlier agreements and treaties will 'be in full force and effect,' but none include such a strong phrase as 'the same as though this agreement had not been made,' and most include language explaining that prior treaties will remain in force so long as they are 'not inconsistent' with the later agreement. . . . *Dick v. United States*, 208 U.S. 340, 352, 28 S.Ct. 399, 402-03, 52 L.Ed. 520 (1908) ([Nez Perce] treaty provisions '*not inconsistent with* the provisions of this agreement are hereby continued in full force and effect').
>
> Article XVIII contains no similar limitation. It does not state that only consistent aspects of the earlier treaty are to continue.

Yankton Sioux Tribe, 99 F.3d at 1447; Pet. App. at 16.

> [E]ach contained limiting words which completely distinguish all other savings clauses from the Yankton Sioux agreement . . . *Dick v. United States*, 208 U.S. 340, 352 (1908) ([Nez Perce] treaty provisions "not inconsistent with the provisions of this agreement are hereby continued in full force and effect").
>
> Article XVIII in the Yankton Sioux agreement contains no such limiting language.

Resp. Yankton Sioux Tribe and Darrell Drapeau's Br. in Opp'n to Pet. for Writ of Cert., *Yankton Sioux Tribe* (May 7, 1997) (No. 96-1581).

In addition, the petitioner in *DeCoteau* listed the Nez Perce Act of August 15, 1894, 28 Stat. 326, in conjunction with other acts where Congress concededly disestablished Indian reservations:

> These Acts include the Act March 2, 1889, c.405, 25 Stat. 888 dividing a portion of the Great Reservation of the Sioux into six separate reservations and opening the remainder to settlement, and those opening to settlement the reservations of . . . Nez Perce, Act of August 15, 1894.

Br. of Pet. at 15, *DeCoteau* (No. 73-1148).

In *DeCoteau*, the State of Idaho also joined the State of North Dakota as *Amici Curiae*. Br. for the State of North Dakota, *et al.* as *Amici Curiae* at 1, *DeCoteau* (No. 73-1148). The scope of that brief, like the scope of the *DeCoteau* opinion, was not limited to the specifics of the Sisseton-Wahpeton agreement. It submitted, in general terms, the strong, definite, acquired and clear meanings of the terms "cede," "sell," "relinquish" and "convey." *Id.* at 1. That submission was intended to resolve cessions in the context of both the Yankton agreement and the Nez Perce agreement. The *Decoteau* opinion was crafted in the same manner.

In another case dealing with a different issue, this Court summarized a related statutory construction concept in the following language:

> Along with punctuation, text consists of words living "a communal existence," in Judge Learned Hand's phrase, the meaning of each word informing the others and "all in their aggregate tak[ing] their purport from the setting in which they are used." *NLRB v. Federbush Co.*, 121 F.2d 954, 957 (CA2 1941). Over and over we have stressed that "[i]n expound-

ing a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *United States v. Heirs of Boisdore*, 49 U.S. (8 How.) 113, 122, 12 L.Ed. 1009 (1849) (quoted in more than a dozen cases, most recently *Dole v. Steelworkers*, 494 U.S. 26, 35, 110 S.Ct. 929, 934, 108 L.Ed.2d 23 (1990)); see also *King v. St. Vincent's Hospital*, 502 U.S. ——, ——, 112 S.Ct. 570, 574, 116 L.Ed.2d 578 (1991). No more than isolated words or sentences is punctuation alone a reliable guide for discovery of a statute's meaning. *Statutory construction "is a holistic endeavor," United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371, 108 S.Ct. 626, 630, 98 L.Ed. 2d 740 (1988), and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter.*

U.S. Nat. Bank of Or. v. Independent Ins. Agents, 113 S.Ct. 2173, 2182 (1993) (emphasis added).

V.

THIS COURT SHOULD PUT ALL SIMILAR ISSUES TO REST AND AUTHORITATIVELY RESOLVE ALL DOUBTS REGARDING THE EFFECTS OF CESSION AGREEMENTS IN THIS CASE.

Tribal attempts to resurrect the 1863 Nez Perce reservation boundaries have been most noticeable recently in conjunction with assertions of tribal jurisdiction over non-members and fee lands. For example, in a number of instances non-Indian entities have been instructed to fully comply with a Tribal Employment Rights Ordinance (including the payment of substantial tribal TERO taxes and total compliance with tribally dictated hiring practices) or face tens of thousands of dollars of tribal fines or other tribal enforcement actions in tribal court. *Lewiston Morning Tribune* (Idaho) November 27, 1996 at 8A. For some projects, it has been estimated that the TERO requirements would increase existing costs hundreds of

thousands of dollars. *Id.* Entities that are said to be subject to TERO include local governmental subdivisions and school districts as well as other private contractors.

In addition, the Nez Perce tribe has recently assessed an ad valorem tax against certain non-Indian businesses that conduct business on non-Indian lands within the 1863 reservation boundaries. *Lewiston Morning Tribune* (Idaho), February 27, 1997 at 1,4. ("'(The tribe) is feeling a real need for injections of revenue' . . . tribal legal counsel Douglas Nash"). Although the exact status of this ad valorem tax is now unclear, the amount at risk is substantial—potentially involving hundreds of thousands, if not millions of dollars (2.7 percent tax on assessed value). *Id.*

In light of all of the above, the status of the 1863 Nez Perce reservation is still of substantial concern to resident non-members and local governmental entities two decades after the decision of this Court in *DeCoteau*. Now is the time for this Court to correct this misunderstanding in no uncertain terms.

If not, our local jurisdictions have been told that we can expect to defend ourselves in litigation on this issue for the next three to five years at a probable cost of one million dollars. *DeCoteau* resolved this issue. This Court should make that point in a manner that will ensure that such litigation is unnecessary.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals should be reversed. The decision in this Court in *DeCoteau* sets forth what should have been the controlling principles.

Respectfully submitted.,

KIMRON R. TORGERSON
Lewis Co. Prosecuting Attorney
P.O. Box 398
Nezperce, ID 83543
(208) 937-2271
Counsel of Record

Dated: August 7, 1997

APPENDICES

APPENDIX TABLE OF CONTENTS

APPENDIX A

AGREEMENT WITH THE NEZ PERCE INDIANS IN IDAHO.

SEC. 16. Whereas Robert Schleicher, James F. Allen, and Cyrus Beede, duly appointed commissioners on the part of the United States, did on the first day of May, eighteen hundred and ninety-three, conclude an agreement with the principal men and other male adults of the Nez Perce tribe of Indians upon the Lapwai Reservation, in the State of Idaho, which said agreement is as follows:

Whereas the President, under date of October thirty-first, eighteen hundred and ninety-two, and under the provisions of the Act of Congress entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, authorized negotiations with the Nez Perce Indians in Idaho for the cession of their surplus lands; and

Whereas the said Nez Perce Indians are willing to dispose of a portion of the tract of land in the State of Idaho reserved as a home for their use and occupation by the second article of the treaty between said Indians and the United States, concluded June ninth, eighteen hundred and sixty-three:

Now, therefore, this agreement made and entered into in pursuance of the provisions of said Act of Congress approved February eighth, eighteen hundred and eighty-seven, at the Nez Perce Agency, by Robert Schleicher, James F. Allen, and Cyrus Beede, on the part of the United States, and the principal men and male adults of the Nez Perce tribe of Indians located on said Nez Perce Reservation, witnesseth:

ARTICLE I.

The said Nez Perce Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of said reservation, saving and excepting the following described tracts of lands, which are hereby retained by the said Indians, viz:

In township thirty-four, range four west: Northeast quarter, north half and southeast of northwest quarter, northeast quarter of southwest quarter, north half and east half of southwest quarter, and the southeast quarter of southeast quarter, section thirteen, four hundred and forty acres.

In township thirty-four, range three west: Sections ten, fifteen, thirty-six, one thousand nine hundred and twenty acres.

In township thirty-three, range three west: Section one; northwest quarter of northeast quarter, north half of northwest quarter section twelve, seven hundred and sixty acres.

In township thirty-five, range two west: South half of northeast quarter, northwest quarter, north half and southeast quarter of southwest quarter, southeast quarter section three; east half, east half of northwest quarter, southwest quarter section ten, section eleven; north half, north half of south half, section twenty-one; east half of northeast quarter, section twenty; section twenty-two, twenty-seven, thirty-five, four thousand two hundred acres.

In township thirty-four, range two west; North half, southwest quarter, north half and southwest quarter and west half of southeast quarter of southeast quarter, section thirteen; section fourteen; north half section twenty-three, west half of east half and west half of northeast quarter, northwest quarter, north half of southwest quarter; west half of east half and northwest quarter and east half of

southwest quarter of southeast quarter, section twenty-four; section twenty-nine, two thousand seven hundred acres.

In township thirty-three, range two west: West-half and southeast quarter section six; sections sixteen, twenty-two, twenty-seven; north half and north half of south half section thirty four, two thousand eight hundred and eighty acres.

In township thirty-four, range one west: West-half section two; sections three, four; north half and southwest quarter section eight; north half section nine; north half and north half of southwest quarter section eighteen; northwest quarter section seventeen, two thousand nine hundred and sixty acres.

In township thirty-seven, range one east: Section twenty; section twenty-one, less south half of south half of southwest quarter of southeast quarter (ten acres), one thousand two hundred and seventy acres.

In township thirty-six, range one east: South-half of sections three, four; sections eleven, twelve, one thousand nine hundred and twenty acres.

In township thirty-six, range two east: Sections sixteen, seventeen, eighteen, twenty; all of section twenty-five west of boundary line of reservation; sections twenty-six, twenty-seven, four thousand two hundred and forty acres.

In township thirty-five, range two east: North half of sections sixteen, seventeen, section twenty-seven: north half of section thirty-four, one thousand six hundred acres.

In township thirty-four, range two east: East half and east half of west half of southeast quarter section twenty-four, one hundred acres.

In township thirty-four, range three east: South half of sections nineteen, twenty; north half; north half of south half; southwest quarter and north half of southeast

quarter of southwest quarter; north half of south half of southeast quarter section twenty-three; north half; north half and north half of southwest quarter and southeast quarter of southwest quarter; southeast quarter section twenty-four; north half and southeast quarter of northeast quarter; north half of northwest quarter section twenty-five; south half of northeast quarter of northeast quarter section twenty-six; section twenty-nine; northeast quarter of northeast quarter and south half section thirty; northwest quarter and north half of southwest quarter section thirty-one; northeast quarter; north half and southeast quarter of northwest quarter section thirty-two; northwest quarter; north half of southwest quarter, section thirty-three, three thousand seven hundred acres.

In township thirty-three, range four east: South half of southeast quarter section eighteen; northeast quarter and fraction northeast of river in east half of northwest quarter section nineteen; fraction west of boundary line of reservation, in section twenty-two; west half and southeast quarter of section thirty-five, one thousand four hundred and forty acres.

In township thirty-two, range four west: Fraction in west half of northeast quarter of southwest quarter; fraction in northwest quarter of southeast quarter section one; section two; south half of section six; west half and southeast quarter of northeast quarter of section nine, one thousand four hundred and ten acres.

In township thirty-one, range four west: South half of northeast quarter; southeast quarter of northwest quarter; northeast quarter of southwest quarter; southeast quarter section seventeen; northwest quarter, section twenty-one, four hundred and eighty acres. Total, thirty-two thousand and twenty acres.

ARTICLE II.

It is also stipulated and agreed that the place known as "the boom" on the Clearwater River, near the mouth

of Lapwai Creek, shall be excepted from this cession and reserved for the common use of the tribe, with full right of access thereto, and that the tract of land adjoining said boom, now occupied by James Moses, shall be allotted to him in such manner as not to interfere with such right. Also that there shall be reserved from said cession the land described as follows: "Commencing at a point at the margin of Clearwater River, on the south side thereof, which is three hundred yards below where the middle thread of Lapwai Creek empties into said river; run thence up the margin of said Clearwater River at low-water mark, nine hundred yards to a point; run thence south two hundred and fifty yards to a point; thence southwesterly, in a line to the southeast corner of a stone building, partly finished as a church; thence west three hundred yards to a point; thence from said point northerly in a straight line to the point of beginning; and also the adjoining tract of land lying southerly of said tract, on the south end thereof; commencing at the said corner of said church, and at the point three hundred yards west thereof, and run a line from each of said points. One of said lines running on the east side and the other on the west of said Lapwai Creek: along the foothills of each side of said creek; up the same sufficiently far so that a line being drawn east and west to intersect the aforesaid lines shall embrace within its boundaries, together with the first above-described tract of land, a sufficient quantity of land as to include and comprise six hundred and forty acres;" for which described tracts of land the United States stipulates and agrees to pay to William G. Langford, his heirs or assigns, the sum of twenty thousand dollars, upon the execution by said Langford, his heirs or assigns, of a release and relinquishment to the United States of all right, title, interest, or claim, either legal or equitable, in and to said tracts of land, derived by virtue of a quit-claim deed of February fourteenth, eighteen hundred and sixty-eight, to the said William G. Langford, from Langdon S. Ward, treasurer of the American Board of Commissioners for

Foreign Missions, which release and relinquishment shall be satisfactory to the Secretary of the Interior, and it is stipulated and agreed by said Nez Perce Indians that upon the execution and approval of such release and relinquishment the right of occupancy of said Indians in said described tracts shall terminate and cease and the complete title thereto immediately vest in the United States: *Provided*, That any member of the said Nez Perce tribe of Indians entitled to an allotment now occupying and having valuable improvements upon any of said lands not already occupied or improved by the United States may have the same allotted to him in such subdivisions as shall be prescribed and approved by the Secretary of the Interior, in lieu of an equal quantity of agricultural land allotted to him elsewhere; and for this purpose shall relinquish any patent that may have been issued to him before the title to said "Langford" tracts of land shall vest in the United States, and shall have a new patent issued to him of the form and legal effect prescribed by the fifth section of the act of February eight, eighteen hundred and eighty-seven (twenty-fourth Statutes, three hundred and eighty-eight), covering the new allotment and that portion of the former allotment not surrendered. It is further agreed that five acres of said tract, upon which the Indian Presbyterian Church is located, as long as same shall remain a church, shall be patented to the trustees of said church; that the said five acres shall not include improvements made by the United States; the said five acres to be selected under the direction of the Commissioner of Indian Affairs.

ARTICLE III.

In consideration for the lands ceded, sold, relinquished, and conveyed as aforesaid the United States stipulates and agrees to pay to the said Nez Perce Indians the sum of one million six hundred and twenty-six thousand two hundred and twenty-two dollars, of which amount the sum of six hundred and twenty-six thousand two hundred and

twenty-two dollars shall be paid to said Indians per capita as soon as practicable after the ratification of this agreement. The remainder of said sum of one million six hundred and twenty-six thousand two hundred and twenty-two dollars shall be deposited in the Treasury of the United States to the credit of the "Nez Perce Indians, of Idaho," and shall bear interest at the rate of five per centum per annum, which principal and interest shall be paid to said Indians per capita as follows, to wit: At the expiration of one year from the date of the ratification of this agreement the sum of fifty thousand dollars, and semiannually thereafter the sum of one hundred and fifty thousand dollars with the interest on the unexpended portion of the fund of one million dollars until the entire amount shall have been paid, and no part of the funds to be derived from the cession of lands by this agreement made shall be diverted or withheld from the disposition made by this article on account of any depredation or other act committed by any Nez Perce Indian, prior to the execution of this agreement, but the same shall be actually paid to the Indians in cash, in the manner and at the times as herein stipulated.

ARTICLE IV.

It is further stipulated and agreed that the United States will purchase for the use of said Nez Perce Indians two portable steam saw mills, at a cost not exceeding ten thousand dollars, and will provide for said Indians, for a period not exceeding two years, and at a cost not exceeding twenty-four hundred dollars, a competent surveyor, for the purpose of fully informing said Indians as to the correct locations of their allotments and the corners and lines thereof.

ARTICLE V.

It is further stipulated and agreed that the lands by this agreement ceded, shall not be opened for public settlement until trust patents for the allotted lands shall have been

duly issued and recorded, and the first payment shall have been made to said Indians.

ARTICLE VI.

It is further stipulated and agreed that any religious society or other organization now occupying under proper authority, for religious or educational work among the Indians, any of the lands ceded, shall have the right for two years from the date of the ratification of this agreement, within which to purchase the land so occupied, at the rate of three dollars per acre, the same to be conveyed to such society or organization by patent, in the usual form.

ARTICLE VII.

It is further stipulated and agreed that all allotments made to members of the tribe who have died since the same were made, or may die before the ratification of this agreement, shall be confirmed, and trust patents issued in the names of such allottees, respectively.

ARTICLE VIII.

It is further stipulated and agreed that the first per capita payment, provided for in Article VIII of this agreement, shall be made to those members of the Nez Perce tribe whose names appear on the schedule of allotments made by Special Agent Fletcher, and to such as may be born to them before the ratification of this agreement: *Provided*, That should it be found that any member of the tribe has been omitted from said schedule, such member shall share in the said payment, and shall be given an allotment, and each subsequent payment shall be made to those who receive the preceding payment and those born thereafter: *Provided*, That not more than one payment shall be made on account of a deceased member.

ARTICLE IX.

It is further agreed that the lands by this agreement ceded, those retained, and those allotted to the said Nez Perce Indians shall be subject, for a period of twenty-five years, to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country, and that the Nez Perce Indian allottees, whether under the care of an Indian agent or not, shall, for a like period, be subject to all the laws of the United States prohibiting the sale or other disposition of intoxicants to Indians.

ARTICLE X.

Representation having been made by the Indians in council that several members of the Nez Perce tribe, to the number of about fifty, as per list hereto attached, served the United States under General O. O. Howard, in the late war with Joseph's Band of said tribe, as scouts, couriers, and messengers, and that they have received no pay therefor; it is agreed that the United States, through its properly constituted authority, will carefully examine each of the cases herewith presented, and make such remunerations to each of said claimants as shall, upon such examination, be found to be due; not exceeding the sum of two dollars and fifty cents per day each, for the time actually engaged in such service; it being understood and agreed that the time of service of said claimants in no case exceeded sixty days. And it also having been made to appear that Abraham Brooks, a member of the Nez Perce tribe of Indians, was engaged in the service of the United States in the late war with Joseph's Band of Nez Perces, and it also appearing that the said Abraham Brooks was wounded in said service, and that by reason thereof, he is now in failing health, and has been for several years; that he is now nearly blind in consequence thereof; it is agreed that an investigation of all the facts in the case shall be made by the proper authorities of the United States, as early as practicable, and that if found substantially as herein

represented, or if found worthy under the law in such cases provided, he shall be allowed and paid by the United States a pension adequate to the service and disability.

ARICLE XI.

The existing provisions of all former treaties with said Nez Perce Indians not inconsistent with the provisions of this agreement are hereby continued in full force and effect.

ARTICLE XII.

This agreement shall not take effect and be in force until ratified by the Congress of the United States.

In witness whereof the said Robert Schleicher, James F. Allen, and Cyrus Beede, on the part of the United States, and the principal men and other male adults of the Nez Perce tribe of Indians, have hereunto set their hands.

Concluded at the Nez Perce Agency, this first day of May, anno domini eighteen hundred and ninety-three.

ROBERT SCHLEICHER,
JAMES T. ALLEN,
CYRUS BEEDE,
A. B. LAWYER; and others.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same hereby is, accepted, ratified, and confirmed.

That for the purpose of carrying the provisions of this Act into effect there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one million six hundred and sixty-eight thousand six hundred and twenty-two dollars, of which amount the sum of one million dollars shall be placed to the credit of "the Nez Perce Indians of Idaho" in the Treasury of the United States, and shall bear interest at the rate of five

per centum per annum. Said sum of one million six hundred and sixty-eight thousand six hundred and twenty-two dollars, together with the interest on said sum of one million dollars, shall be paid to said Indians, or expended for their benefit, as provided in articles two, three, four, and eight of said agreement; "out of which sum the Secretary of the Interior shall pay to the heirs, administrator, or legal representatives of William G. Langford, deceased, the sum of twenty thousand dollars, upon a release and relinquishment to the United States by said heirs, administrator, or legal representatives of all right, title, interest, or claim, either legal or equitable, in and to the tract of land described in article two of said agreement as therein provided: *Provided*, That none of the money agreed to be paid said Indians, nor any of the interest thereon, shall be, or become, liable to the payment of any judgment or claim for depredations committed by said tribe or any member thereof before the date of said agreement.

That immediately after the issuance and receipt by the Indians of trust patents for the allotted lands, as provided for in said agreement, the lands so ceded, sold, relinquished, and conveyed to the United States shall be opened to settlement by proclamation of the President, and shall be subject to disposal only under the homestead, town site, stone and timber, and mining laws of the United States, excepting the sixteen and thirty-sixth sections in each Congressional township, which shall be reserved for common school purposes and be subject to the laws of Idaho: *Provided*, That each settler on said lands shall, before making final proof and receiving a certificate of entry, pay to the United States for the lands so taken by him, in addition to the fees provided by law, the sum of three dollars and seventy-five cents per acre for agricultural lands, one-half of which shall be paid within three years from the date of original entry; and the sum of five dollars per acre for stone, timber, and mineral lands, subject to the regulations prescribed by existing laws; but the rights

of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid.

That the Commissioner of Indian Affairs be, and he hereby is, authorized to employ a competent surveyor for a period not exceeding two years, at a compensation not exceeding one thousand two hundred dollars per annum, for the purpose stipulated in article four of said agreement, and he is also authorized to purchase two portable sawmills, as provided in article four.

That the Secretary of the Interior is hereby authorized to examine the claim of those Indians who served the United States under General O. O. Howard in the late war with Joseph's band of said tribe as scouts, couriers, and messengers, referred to in article ten of said agreement, and also as to the claim of Abraham Brooks, mentioned in said article, and report his findings and recommendations to Congress.

APPENDIX B

By the President of the United States of America.

A PROCLAMATION.

Whereas, pursuant to section five, of the act of Congress approved February 8, 1887, (24 Stats. 388), entitled "An act to provide for the allotment of lands in severalty to the Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes", certain articles of cession and agreement were made and concluded at the Nez Perce Agency, Idaho, on the first day of May, eighteen hundred and ninety-three, by and between the United States of America and the Nez Perce Indians, whereby said Indians, for the consideration therein mentioned, ceded and conveyed to the United States all their claim, right, title and interest to all the unallotted lands set apart as a home for their use and occupation by the second article of the treaty between said Indians and the United States, concluded June ninth, eighteen hundred and sixty-three (14 Stats., 647), and included in the following boundaries, to wit:

> Commencing at the N. E. corner of Lake Wa-ha, and running thence, northerly, to a point on the north bank of the Clearwater river, three miles below the mouth of the Lapwai, thence down the north bank of the Clearwater to the mouth of the Hat-wai creek; thence due north to a point seven miles distant; thence eastwardly, to a point on the north fork of the Clearwater, seven miles distant from its mouth; thence to a point on Oro Fino Creek, 5 miles above its mouth; thence to a point on the north fork of the south fork of the Clearwater, one mile above the bridge, on the road leading to Elk City, (so as to include all the Indian farms now

within the forks;) thence in a straight line, westwardly to the place of beginning,

saving and excepting the sixteenth and thirty-sixth sections of each Congressional township, which shall be reserved for common-school purposes and be subject to the laws of Idaho, and excepting the tracts described in articles one and two of the agreement, viz:

The said Nez Perce Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of said reservation, saving and excepting the following described tracts of lands, which are hereby retained by the said Indians, viz:

In township thirty-four, range four west: Northeast quarter, north half and southeast of northwest quarter, northeast quarter of southwest quarter, north half and east half of southwest quarter, and the southeast quarter of southeast quarter, section thirteen, four hundred and forty acres.

In township thirty-four, range three west: Sections ten, fifteen, thirty-six, one thousand nine hundred and twenty acres.

In township thirty-three, range three west: Section one; northwest quarter of northeast quarter, north half of northwest quarter section twelve, seven hundred and sixty acres.

In township thirty-five, range two west: South half of northeast quarter, northwest quarter, north half and southeast quarter of southwest quarter, southeast quarter section three; east half, east half of northwest quarter, southwest quarter section ten, section eleven; north half, north half of south half, section twenty-one; east half of northeast quarter,

section twenty; sections twenty-two, twenty-seven, thirty-five, four thousand two hundred acres.

In township thirty-four, range two west: North half, southwest quarter, north half and southwest quarter and west half of southeast quarter of southeast quarter, section thirteen; section fourteen; north half section twenty-three, west half of east half and west half of northeast quarter, northwest quarter, north half of southwest quarter, west half of east half and northwest quarter and east half of southwest quarter of southeast quarter, section twenty-four; section twenty-nine, two thousand seven hundred acres.

In township thirty-three, range two west: West half and southeast quarter section sixteen, twenty-two, twenty-seven; north half and north half of south half section thirty-four, two thousand eight hundred and eighty acres.

In township thirty-four, range one west: West half section two; sections three, four; north half and southwest quarter section eight; north half section nine; north half and north half of southwest quarter section eighteen; northwest quarter section seventeen, two thousand nine hundred and sixty acres.

In township thirty-seven, range one east: Section twenty; section twenty-one, less south half of south half of southwest quarter of southeast quarter (ten acres), one thousand two hundred and seventy acres.

In township thirty-six, range one east: South half of sections three, four; sections eleven, twelve, one thousand nine hundred and twenty acres.

In township thirty-six, range two east: Sections sixteen, seventeen, eighteen, twenty; all of section twenty-five west of boundary line of reservation; sections twenty-six, twenty-seven, four thousand two hundred and forty acres.

In township thirty-five, range two east: North half of sections sixteen, seventeen, section twenty-seven; north half of section thirty-four, one thousand six hundred acres.

In township thirty-four, range two east: East half and east half of West half of southeast quarter section twenty-four, one hundred acres.

In township thirty-four, range three east: South half of sections nineteen, twenty; north half; north half of south half; southwest quarter and north half of southeast quarter of southwest quarter; north half of south half of southeast quarter section twenty-three; north half; north half and north half of southwest quarter and southeast quarter of southwest quarter; southeast quarter section twenty-four; north half and southeast quarter of northeast quarter; north half of northwest quarter section twenty-five; south half of northeast quarter of northeast quarter section twenty-six; section twenty-nine; northeast quarter of northeast quarter and south half section thirty; northwest quarter and north half of southwest quarter section thirty-one; northeast quarter; north half and southeast quarter of northwest quarter section thirty-two; northwest quarter; north half of southwest quarter, section thirty-three, three thousand seven hundred acres.

In township thirty-three, range four east: South half of southeast quarter section eighteen; northeast quarter and fraction northeast of river in east half of northwest quarter section nineteen; fraction west of boundary line of reservation, in section twenty-two; west half and southeast quarter of section thirty-five, one thousand four hundred and forty acres.

In township thirty-two, range four east: Fraction in west half of northeast quarter of southwest quarter; fraction in northwest quarter of southeast quarter

section one; section two; south half of section six; west half and southeast quarter of northeast quarter of section nine, one thousand four hundred and ten acres.

In township thirty-one, range four east: South half of northeast quarter; southeast quarter of northwest quarter; northeast quarter of southwest quarter; southeast quarter section seventeen; northwest quarter section twenty-one, four hundred and eighty acres. Total, thirty-two thousand and twenty acres.

ARTICLE II.

It is also stipulated and agreed that the place known as "the boom" on the Clearwater River, near the mouth of Lapwai Creek, shall be excepted from this cession and reserved for the common use of the tribe, with full right of access, thereto, and that the tract of land adjoining said boom, now occupied by James Moses, shall be allotted to him in such manner as not to interfere with such right. Also that there shall be reserved from said cession the land described as follows: "Commencing at a point at the margin of Clearwater River, on the south side thereof, which is three hundred yards below where the middle thread of Lapwai Creek empties into said river; run thence up the margin of said Clearwater River at low-water mark, nine hundred yards to a point; run thence south two hundred and fifty yards to a point; thence southwesterly, in a line to the southeast corner of a stone building, partly finished as a church; thence west three hundred yards to a point; thence from said point northerly in a straight line to the point of beginning; and also the adjoining tract of land lying southerly of said tract, on the south end thereof; commencing at the said corner of said church, and at the point three hundred yards west thereof, and run a line from each of said points. One of said lines running on the east side and the other

on the west of said Lapwai Creek; along the foothills of each side of said creek; up the same sufficiently far so that a line being drawn east and west to intersect the aforesaid lines shall embrace within its boundaries, together with the first above described tract of land, a sufficient quantity of land as to include and comprise six hundred and forty acres;

and excepting the land embraced in the William Craig donation claim, in Township 35 North, range 3 west. (See case of Caldwell v. Robinson, Federal Reporter, Vol. 59, p. 653); and

Whereas it is further stipulated and agreed by article six of the agreement that any religious society or other organization now occupying under proper authority, for religious or educational work among the Indians, any of the lands ceded, shall have the right for two years from the date of the ratification of this agreement, within which to purchase the land so occupied, at the rate of three dollars per acre, the same to be conveyed to such society or organization by patent, in the usual form; and

Whereas, it is further agreed by article nine of the agreement that the lands by this agreement ceded, those retained, and those allotted to the said Nez Perce Indians shall be subject, for a period of twenty-five years, to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country, and that the Nez Perce Indian allottees, whether under the care of an Indian agent or not, shall, for a like period, be subject to all the laws of the United States prohibiting the sale or other disposition of intoxicants to Indians; and

Whereas, it is provided in the act of Congress, accepting, ratifying, and confirming said agreement, approved August fifteenth, eighteen hundred and ninety-four (28 Stats., pp. 286 to 338), section 16:

That immediately after the issuance and receipt by the Indians of trust patents for the allotted lands, as

provided for in said agreement, the lands so ceded, sold, relinquished, and conveyed to the United States shall be opened to settlement by proclamation of the President, and shall be subject to disposal only under the homestead, town-site, stone and timber, and mining laws of the United States, excepting the sixteenth and thirty-sixth sections in each congressional township, which shall be reserved for common-school purposes and be subject to the laws of Idaho: *Provided*, That each settler on said lands shall, before making final proof and receiving a certificate of entry, pay to the United States for the lands so taken by him, in addition to the fees provided by law, the sum of three dollars and seventy-five cents per acre for agricultural lands, one-half of which shall be paid within three years from the date of original entry; and the sum of five dollars per acre for stone, timber, and mineral lands, subject to the regulations prescribed by existing laws; but the rights of honorably discharged Union soldiers and sailors, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to the sum to be paid as aforesaid;

and

Whereas all the terms, conditions, and considerations required by said agreement made with said tribe of Indians hereinbefore mentioned, and the laws relating thereto, precedent to opening said lands to settlement have been, as I hereby declare, provided for, paid and complied with;

Now, therefore, I, Grover Cleveland, President of the United States, by virtue of the power in me vested by the statutes hereinbefore mentioned, and by said agreement, do hereby declare and make known that all of the unallotted and unreserved lands acquired from the Nez Perce Indians, by said agreement, will, at and after the hour of 12 o'clock noon, (Pacific Standard time) on the

8th day of November 1895 and, not before, be opened to settlement under the terms of and subject to all the conditions, limitations, reservations, and restrictions contained in said agreement, the statutes above specified and the laws of the United States applicable thereto.

The lands to be so opened to settlement are for greater convenience particularly described in the accompanying schedule, entitled "Schedule of Lands within the Nez Perce Indian Reservation, Idaho, to be opened to settlement by Proclamation of the President", and which schedule is made a part hereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 8th day of November in the year of our Lord, one thousand eight
[SEAL.] hundred and ninety-five, and of the Independence of the United States the one hundred and twentieth.

GROVER CLEVELAND

By the President:

RICHARD OLNEY
Secretary of State.